

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 BRADLEY G. DRUMMOND,

Case No.: 3:18-cv-00152-MMD-WGC

4 Plaintiff

Order

5 v.

Re: ECF No. 54

6 JAMES DZURENDA, et. al.,

7 Defendants
8

9 Before the court is Defendants' Motion for Leave to File Exhibit H Under Seal in Support
10 of Defendants' Motion for Summary Judgment. (ECF No. 54.) Plaintiff did not file a response.

11 In this motion, Defendants seek to file under seal Exhibit H filed in support of their
12 motion for summary judgment, which contains a confidential internal operational procedure (OP)
13 for the Nevada Department of Corrections (NDOC).

14 "Historically, courts have recognized a general right to inspect and copy public records
15 and documents, including judicial records and documents." *Kamakana v. City and County of*
16 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).
17 "'Throughout our history, the open courtroom has been a fundamental feature of the American
18 judicial system. Basic principles have emerged to guide judicial discretion respecting public
19 access to judicial proceedings. These principles apply as well to the determination of whether to
20 permit access to information contained in court documents because court records often provide
21 important, sometimes the only, bases or explanations for a court's decision.'" *Oliner v.*
22 *Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*
23 *v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

1 Documents that have been traditionally kept secret, including grand jury transcripts and
2 warrant materials in a pre-indictment investigation, come within an exception to the general right
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of
4 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The
5 presumption of access is 'based on the need for federal courts, although independent—indeed,
6 particularly because they are independent—to have a measure of accountability and for the
7 public to have confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler*
8 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
9 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
10 *Broad Co. v. U.S. Dist. Ct., D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document
12 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
13 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only
14 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without
15 relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
16 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
17 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the
18 sound discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599
19 (1978)). "Examples include when a court record might be used to 'gratify private spite or
20 promote public scandal,' to circulate 'libelous' statements, or 'as sources of business information
21 that might harm a litigant's competitive standing.'" *Id.*

22 The good cause standard, on the other hand, is the exception to public access that has
23 been typically applied to "sealed materials attached to a discovery motion unrelated to the merits

1 of the case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which
2 governs the issuance of protective orders in the discovery process: The court may, for good
3 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
4 undue burden or expense.'" *Id.*


5 The Ninth Circuit has clarified that the key in determining which standard to apply is
6 whether the documents proposed for sealing accompany a motion that is "more than tangentially
7 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
8 compelling reasons standard is applied. If not, the good cause standard is applied.

9 Here, Defendants seek to file exhibits under seal in connection with their motion for
10 summary judgment which is unquestionably "more than tangentially related to the merits of a
11 case." Therefore, the compelling reasons standard applies.

12 Here, the referenced exhibit contains an internal prison operating procedure concerning
13 institutional procedures on inmate counts. The court appreciates the confidential nature of this
14 internal operating procedure and the importance of keeping it out of the public domain so that it
15 is not intercepted by prisoners who could potentially utilize it in a nefarious manner. Therefore,
16 balancing the need for the public's access to court filings, against the need to maintain the
17 confidentiality of this document weighs in favor of sealing this exhibit. Therefore, Defendants'
18 motion (ECF No. 54) is **GRANTED**.

19 **IT IS SO ORDERED.**

20 Dated: January 27, 2021

21 
22 William G. Cobb
23 United States Magistrate Judge